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No. 71-175

In the Supreme Court of the United States

OCTOBER TERM, 1971

NORMAN H. EGENBERG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-115

NORMAN H. EGENBERG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This supplemental memorandum is submitted in response to a letter from the Clerk of this Court dated October 20, 1971, requesting the government to file a further brief "directed specifically to the arguments, advanced in the petitioner's reply brief, that the cases cited in your earlier response should not be held to control the question whether 26 U.S.C. 7207 precludes the application of 18 U.S.C. 1001 to the acts charged to petitioner."

The cases cited in our earlier memorandum on this issue—principally *United States* v. *Beacon Brass Co.*, 344 U.S. 43; *United States* v. *Eisenmann*, 396 F. 2d 565, 567-568 (C.A. 2); and *Sansone* v. *United States*, 380 U.S.

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343—were not intended to be controlling but merely to show that repeals of statutes by implication are not favored. As applied to 18 U.S.C. 1001, further research has confirmed that the courts have repeatedly rejected claims that the existence of more specific statutes punishing false statements, which partially overlap that Section, have the effect of pro tanto repealing Section 1001 or preventing prosecution thereunder. See, *e.g.*, *United States* v. *Gilliland*, 312 U.S. 86;[1] *Cohen* v. *United States*, 201 F. 2d 386, 392–393 (C.A. 9), certiorari denied, 345 U.S. 951.[2]

Prior to the enactment of Section 7207 in 1954, the courts had held that neither the predecessor to that statute (Section 3616 of the Internal Revenue Code of 1939) nor a related section of the Code repealed or barred prosecution pro tanto under 18 U.S.C. 1001. See *Ex parte Cohen*, 191 F. 2d 300 (C.A. 9) (denying bail), concurred in at 192 F. 2d 933, certiorari denied, 342 U.S. 947; *Gaunt* v. *United States*, 184 F. 2d 284, 286–287, 289–290 (C.A. 1), certiorari denied, 340 U.S. 917. The legislative history of Section 7207 reveals that Congress in 1954 did not intend any basic changes in the coverage of the Section (see H. Rep. No. 1337 and S. Rep. No. 1622, 83d Cong., 2d Sess., set forth in

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[1] In *Gilliland* the Court rejected a contention that enactment of the Hot Oil Act of 1935, one year following the enactment of the predecessor of Section 1001, meant that Congress intended that prosecutions for false statements made in affidavits submitted under the Hot Oil Act be brought only under the more lenient provisions of that Act punishing such false statements.

[2] In *Cohen*, as in the *Eisenmann* case, *supra*, the court of appeals held that Section 1001 could apply notwithstanding the existence of a more specific false statement statute in the internal revenue field.

1954 U.S. Code Cong. & Adm. News, pp. 4573, 5253), although this Court in *Sansone* v. *United States,* 380 U.S. 343, 347–349, held that it was only in the 1954 reenactment that Congress first intended Section 7207 to extend to false statements on income tax returns.[3] Subsequent to 1954 only one district court to our knowledge has passed on the precise issue here raised, that court holding that prosecutions under Section 1001 were not affected by the passage of Section 7207. *United States* v. *Citron,* 221 F. Supp. 454 (S.D. N.Y.).

We think this result is proper and reflects the long line of decisions set forth above in which this Court and others have resisted efforts to curtail the scope of 18 U.S.C. 1001 based upon the existence of other, more specific false statement statutes.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1971.

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[3] The Court in *Achilli* v. *United States,* 353 U.S. 373, had held that the predecessor statute, Section 3616(a), did not apply to income tax returns.

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